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Supreme Court of the United States.

OCTOBER TERM, 1937.

No. 34.

WORCESTER COUNTY TRUST COMPANY,
Petitioner, Appellant,
v.
RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, ET AL.,
Respondents, Appellees.

BRIEF FOR RESPONDENT HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS.

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BRIEF OF RESPONDENT HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS.

Certiorari to the Circuit Court of Appeals for the First Circuit reversing a decision of the District Court for the District of Massachusetts which enjoined the tax officials of Massachusetts and California from proceeding to assess an inheritance tax upon a bill filed by an executor under the Federal Interpleader Act of January 20, 1936.

Proceedings in Courts Below.

The appellant, Worcester County Trust Company, as executor under the will of Robert H. Hunt, filed a bill in the nature of a bill of interpleader under the provisions of Judicial Code, §24, as amended by Act of January 20, 1936 (c. 13, §1), 49 Stat. 1096, Title 28, U.S.C. §41 (26), in the United States District Court for the District of Massachusetts, against Henry F. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, Ray L. Riley, W. H. H. Gentry and Frank P. Sproul, Controller, Inheritance Tax Attorney and Inheritance Tax Appraiser, respectively, of the State of California, seeking to avoid the imposition of an inheritance tax by the taxing officials of both Massachusetts and California, who claimed that the decedent was domiciled in their respective States at the time of his death. The bill prayed for an injunction and determination of domicile.

The defendant Long filed an answer and submitted to the jurisdiction of the District Court, but the tax officials of California moved to dismiss the bill principally on the ground that the suit was one against the States. An injunction was granted and the motion denied. *Worcester County Trust Co., Executor,* v. *Long,* 14 Fed. Supp. 754.

A petition for certiorari to the District Court by the California defendants was denied on October 12, 1936, 299 U.S. 567. An appeal by these defendants to the Circuit Court of Appeals for the First Circuit was sustained by a

majority opinion. *Riley* v. *Worcester County Trust Co.*, 89 Fed. (2d) 59. A petition for certiorari to the Circuit Court was allowed by this court on May 24, 1937, 301 U.S. —, 57 S. Ct. 931.

The defendant Long declined to join the appeal from the District Court to the Circuit Court of Appeals, but subsequent to the decision in the latter court he sought and received from this court, on May 24, 1937, 301 U.S. —, 57 S. Ct. 931, permission to intervene as a party defendant.

Question Presented.

Is a Federal District Court empowered by the Interpleader Act, Judicial Code, §24 (26), as amended by the Act of January 20, 1936 (c. 13, §1), 49 Stat. 1096, 28 U.S.C. §41 (26), to hear a bill brought by an executor to enjoin the taxing officials of different States who threaten to impose inheritance taxes on the ground that the decedent at the time of his death was domiciled in their respective States?

The basic issue now calling for decision is whether or not the real parties in interest are the States of Massachusetts and California so that the District Court would be precluded from exercising jurisdiction by the Eleventh Amendment to the Constitution of the United States.

Constitutional and Statutory Provisions Involved.

The Eleventh Amendment to the Constitution provides:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state."

The Interpleader Act is set out in full in the Appendix, pages 35-38, and the portion now pertinent reads as follows:

> "The district courts shall have original jurisdiction as follows:
>
> . . . . . .
>
> "Twenty-sixth.—(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any person . . . being under any obligation written or unwritten to the amount of $500 or more, if—
>
> "(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled . . . to any one or more of the benefits arising by virtue of any such obligations; and
>
> "(ii) The complainant . . . (b) has given bond payable to the clerk of the court in such amount and

with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

. . . . . .

"(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

"(e) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such . . . obligation until the further order of the court; . . ."

The pertinent Massachusetts and California statutes relative to inheritance taxes are also included in the Appendix to this brief, pages 39-68.

Statement of the Case.

On June 26, 1935, the appellant, Worcester County Trust Company, was appointed by the Probate Court of Worcester County, Massachusetts, executor under the will of Robert H. Hunt, who died on June 11, 1935. Ancillary administration was procured in California by the

appointment by the Superior Court of the County of Los Angeles on July 29, 1935, of the Security-First National Bank of Los Angeles as administrator with the will annexed (R. 2, 3). The estate, according to the allegations of the bill, consisted of real estate and bank deposits in California, but most of the bank deposits and the bulk of the intangible personal property, which is considerable in amount, is located in Massachusetts (R. 3). The bill, in its sixth paragraph, charges that the executor has in its possession money and property valued at more than five hundred dollars, to which the tax officials of both Massachusetts and California claim to be entitled adversely to each other under certain taxing statutes of each of the said States; that the executor is under an obligation to pay all inheritance taxes to the defendant tax officials, each of whom claims to be entitled thereto. The bill further alleges that, by virtue of the taxing provisions of each State, a lien is imposed upon all the property of the decedent for the payment of taxes assessed by the several defendants; that the defendant Long has determined that the decedent died domiciled in Massachusetts and has asserted and threatens to assess and to collect an inheritance tax in excess of one hundred thousand dollars, and that the defendant California taxing officers are threatening similar action on the ground that the decedent was domiciled in that State, and threaten likewise to collect a tax exceeding one hundred thousand dollars. The bill further avers that

only a nominal amount will be due the State other than the domiciliary State.

It is averred that the threatened collection of inheritance taxes in both States, based upon the inconsistent claim by the defendant tax officials that the decedent at his death was domiciled in their particular State, would be violative of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States (R. 5). The bill alleges and the record shows a surety company bond in the amount of two hundred thousand dollars has been filed with the clerk of the District Court, conditioned upon a compliance by the executor "with the future order or decree of the court with respect to the subject matter of the controversy" (R. 9, 10). The bill prayed for an injunction, the ascertainment of domicile, the determination of "the person or persons entitled to said money and property and to any benefit arising by virtue of complainant's said obligation," and for general relief (R. 5, 6).

Upon the filing of the bill and the bond approved by the court, a temporary restraining order was issued against all the defendants (R. 12), and thereafter California defendants appeared specially and filed a motion to dismiss, objecting to the jurisdiction of the court mainly on the ground that, as the State of California was a real party in interest, a suit could not be maintained against it, by virtue of the Eleventh Amendment (R. 15). The District Court

issued an interlocutory injunction (R. 24) and denied the motion to dismiss in a written opinion (R. 26). *Worcester County Trust Co.* v. *Long,* 14 Fed. Supp. 754.

On appeal the Circuit Court of Appeals for the First Circuit by a divided court ordered the injunction to be dissolved and the cause be remanded to the District Court with directions to dismiss the bill for want of jurisdiction. (R. 43, 59). *Riley* v. *Worcester County Trust Co.,* 89 Fed. (2d) 59.

The defendant Long, Commissioner of Corporations and Taxation in Massachusetts, filed an answer in the District Court and submitted to the jurisdiction of that court (R. 20). He declined to join with the other defendants in their appeal from the decision of the District Court (R. 39), and by permission of this court, granted on May 24, 1937, he was restored as a party defendant.

Argument.

I. A Motion to Dismiss Admits the Facts Alleged in the Bill.

The appellees filed a motion to dismiss, and, consequently, are bound by the allegations of fact well pleaded in the bill, and they have no right to attack such allegations which are to be supported by evidence at the trial. They are confined to the proposition that the bill upon its face does not show a cause over which the District Court has jurisdiction. The scope of a motion to dismiss based

upon the allegations of the bill is similar to that prevailing in the case of a demurrer.

Old Company's Lehigh v. *Meeker,* 294 U.S. 227, 228.

United States v. *West Virginia,* 295 U.S. 463, 472.

Ickes v. *Virginia-Colorado Development Corp.,* 295 U.S. 639.

Pacific States Box & Basket Co. v. *White,* 296 U.S. 176.

The court "should still be obliged to indulge the presumption, in favor of the jurisdiction of the trial court, that respondents might be able to prove them." *Ickes* v. *Fox,* 300 U.S. 82.

And in cases where, as here, it was attempted to set up that the defendants were acting as agents and representatives of the State, this court has held that the mere suggestion is not enough, but must be sustained by proof. The contention that the defendants are acting entirely for and in behalf of the State is clearly a matter reaching to the merits rather than to the jurisdiction of the court, and unless it clearly appears upon the face of the record that the nature of the relief sought is such as to make the States real or indispensable parties, then the motion should be dismissed.

United States v. *Lee,* 106 U.S. 196, 218, 219.

Tindal v. *Wesley,* 167 U.S. 204, 215.

II. Only the Domiciliary State may Impose a Death Tax on Intangible Personal Property.

The bill alleges that the taxing officials of both States are threatening to impose an inheritance tax in an amount exceeding one hundred thousand dollars upon the intangible personal property of the estate on the ground that the decedent at the time of his death was domiciled in that particular State, and that the tax due, other than upon this intangible property, will only be in a nominal amount. The taxing officials both claim to be justified under the taxing statutes to collect and assess a tax on the intangible property. Both claim a lien upon the same property for the payment of the tax. They make similar claims upon a common source, although the origin of their claims is separate from and independent of each other. Their claims, however, are adverse to each other. Each claims that his State is the domiciliary State. Both cannot be right. The decedent at his death could have but one domicile, and the taxing officials of one of these two States must be acting in violation of the constitutional rights of the appellant and beyond the authority entrusted to them by the statutes of their own State. The tax claim of one of them is not warranted in law. The demand of the other is valid. The bill is brought to determine which set of taxing officials has the genuine and valid right to tax, for there can be only one such right. Hunt could have had but one domicile, and the determination of the locus of that domicile occasions the present controversy.

Prior to the adoption of the present interpleader statute, upon which the bill is purported to be based, each State where property of a decedent was located had the right to determine for itself the domicile of the decedent and the persons who were entitled to the property. The judgment of the courts of a sister State that the decedent at the time of his death was domiciled there in no way precluded another State where some of the property of the estate was located from deciding that he was domiciled in that State. The second State was not bound by the full faith and credit clause of the Constitution of the United States (art. IV, §I) to give effect to the prior finding in the other State.

Thormann v. *Frame,* 176 U.S. 350.
Overby v. *Gordon,* 177 U.S. 214.
Tilt v. *Kelsey,* 207 U.S. 43.
Baker v. *Baker, Eccles & Co.,* 242 U.S. 394.

Recently, in Massachusetts, a finding that a person was domiciled in Maine did not prevent the Massachusetts court from finding that she was at the time in question domiciled in the latter State. *Tuells* v. *Flint,* 283 Mass. 106. The fact that the courts of Pennsylvania decided that a decedent was domiciled there and that the executor was liable to death taxes in the amount of several million dollars did not prevent the courts of New Jersey from adjudicating that his domicile was there and collecting

from the executor a similar amount. *Estate of Dorrance,* 309 Pa. 151. *In re Dorrance,* 116 N.J. Eq. 204. *New Jersey* v. *Pennsylvania,* 287 U.S. 580. *Dorrance* v. *Pennsylvania,* 287 U.S. 660. *Hill* v. *Martin,* 296 U.S. 393. *Dorrance* v. *Martin,* 298 U.S. 678. See *In re Pusey's Estate,* 321 Pa. 248, certiorari denied, *sub. nom. Lavely* v. *Young Women's Christian Assoc.,* 299 U.S. 572, rehearing denied 299 U.S. 621.

There is now pending in this court an original proceeding, No. 13, *Texas* v. *Florida et al.,* 300 U.S. 642, in which one State complains that, if each of the other three defendant States decides, as they threaten to do, that one Green was domiciled at his death within its boundaries, there will not be enough assets left to pay the inheritance taxes claimed to be due Texas, which is also claiming to be the domiciliary State. That is a controversy between sovereign States in their own right and for their own benefit. Such a remedy is not open to an executor even though a State may wish to protect him as one of her own citizens and at the same time be able to collect an inheritance tax.

New Hampshire v. *Louisiana,* 108 U.S. 76.
Louisiana v. *Texas,* 176 U.S. 1.

A single tribunal where a final decision would be binding upon the estate and upon the taxing officials of various States claiming to be entitled to tax the intangible property seems to be the only practical solution. The

voluntary submission to any court by the taxing officials of different States can hardly be expected. Only once has this occurred. *Matter of Trowbridge,* 266 N.Y. 283. Evidently a State court is not the proper tribunal, but the objections that may apply to it are entirely lacking in a Federal court. If the Interpleader Act is open to an estate for the determination of questions of domicile in order to determine what State is entitled to levy inheritance taxes upon intangible property, then a solution has been found to a problem which has attracted the interest not only of taxing officials but also of the general public.

45 Yale Law Journal, 1170.
49 Harvard Law Review, 1378.
50 Harvard Law Review, 950, 960.

An inquiry made during the last few months of the taxing officials of the various States as to cases pending between different States, occasioned by conflicting claims relative to domicile, discloses the following:

Arizona	One case with Indiana.
Arkansas	Two cases, one of which is with Washington.
California	Two cases, with Oregon and Washington.
Colorado	One case with Indiana.
Florida	One case with Texas.

Georgia	One case with New York.
Illinois	One case with Washington.
Indiana	Two cases, with Arizona and Colorado.
Kentucky	Two cases, with Washington and Pennsylvania.
Maine	One case with New York.
New Jersey	Two cases, both with Pennsylvania.
New York	Two cases, with Georgia and Maine.
Oregon	Three cases, two with Washington and one with California.
Pennsylvania	Three cases, two with New Jersey and one with Kentucky.
Texas	One case with Florida.
Washington	Seven cases, two with Oregon and one each with Kentucky, Alaska, Illinois, California and Arkansas.

The transfer from the decedent of his intangible personal property was a single event which could only occur in the domiciliary State. No death tax could be lawfully imposed upon such a transfer by any other State.

Farmers Loan & Trust Co. v. *Minnesota,* 280 U.S. 204.

First National Bank v. *Maine,* 284 U.S. 312.

City Bank Farmers Trust Co. v. *Schnader,* 291 U.S. 24.

III. The Interpleader Act of 1936 is an Appropriate Remedy.

The bill makes every allegation essential to bring it within the sweep of the act. The executor in substance alleges that (1) it is in possession of money or property of the value of more than $500, (2) which by virtue of certain taxing statutes of either Massachusetts or California it is under obligation to pay in an amount in excess of $100,000 to the taxing officials of one or the other of these States, but not to both; (3) that these officials, who are citizens of their respective and different States, are each claiming that the decedent was domiciled in their State at the time of his death and so are entitled to, and threaten to assess and collect, a death tax on the intangible personal property; (4) that the claims of these State authorities are adverse to each other and each denies that the decedent was at his death domiciled in the State of the other official; and (5) that, while the executor is under a single obligation to pay such a tax on the intangibles, it is in danger of being under a dual obligation, which, unless relief is granted, it will be compelled to satisfy by paying twice a tax based upon a transfer occasioned by death which could only have happened in one State and which could not authorize a double impost without being violative of its rights under the Fourteenth Amendment to the Constitution of the United States. A proper bond has been filed and an injunction has been sought and secured in accordance with the act.

We submit that the bill contains every material provision of the act and sets out a case for relief in the nature of a bill of interpleader if the act itself, upon which it is based, is valid.

The defendants are claimants, as each of them contends that he is entitled to be paid out of the assets of the estate an inheritance tax based upon the transfer of all its intangible property, and each contends that his claim arises from an obligation imposed upon the estate by the tax laws of his own State. The defendant Long, as Commissioner of Corporations and Taxation, is required to collect inheritance taxes by the express provisions of G.L. c. 65, §32, which, so far as material, provides: "The commissioner shall commence proceedings for the recovery of any of the taxes imposed by this chapter or by corresponding provisions of earlier laws within six months after the same become payable." The defendant Riley, as Controller of the State of California, is in charge of the inheritance tax department of that State, and, while the collection of the tax is delegated to county treasurers, yet the supervision and management of this entire taxing system is in charge of this defendant. See §445 and §19 of the California statutes, contained in the Appendix, pp. 41-44, 66.

Previous to the adoption of the original statute, Acts of February 22, 1917, c. 113, 39 Stat. 929, the Federal court did not have jurisdiction to hear a bill of interpleader where the claimants were citizens of different States. The

original act authorized such an interpleader action in behalf of insurance companies, and later the privilege was extended to liability and surety companies. Act of February 25, 1925, c. 317, §§1-3, 43 Stat. 976; Act of May 8, 1926, c. 273, §§1-3, 44 Stat. 446. These various successive statutes were repealed by the present Act of January 20, 1936, c. 13, §1, 49 Stat. 1096, and the scope greatly widened and enlarged. The remedy was no longer confined to bills of interpleader, but also to bills in the nature of interpleader. The nature of the liability of the complainant might now arise under any written or unwritten obligation to claimants of one or more benefits arising out of such an obligation, although the "conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another." The extent to which the act was amplified by the 1936 amendment is shown by black type in the act, which is set forth in the Appendix, pp. 35-38.

The present controversy comes within the terms of the present act, and the case set forth in the bill fits the statutory description. The appellees contend that it is manifest from its legislative history that Congress never intended to have the act apply to cases like the instant one. They hardly claim that the statutory language is not broad enough to include such a case. A statute is to be construed according to its terms, and where the phraseology is clear, plain, apt and general, no exemption should be read into

the enactment restricting its operation to certain persons and excluding others. "The words of the statute are plain and should be accorded the usual significance in the absence of some dominant reason to the contrary." *Old Colony Trust Co.* v. *Commissioner of Internal Revenue*, 301 U.S. —, 57 S. Ct. 813.

Hamilton v. *Rathbone*, 175 U.S. 414, 419, 421.
Crooks v. *Harrelson*, 282 U.S. 55, 59, 60.
Helvering v. *City Bank Farmers Trust Co.*, 296 U.S. 85.

The reports of various committees which drafted the measure and the debates on the floor of the Senate and the House of Representatives of those in charge of the passage of the bill may be resorted to only in case the language of the statute is ambiguous, and not where its phraseology is clear and manifest.

United States v. *Lexington Mill & Elevator Co.*, 232 U.S. 399, 409.
Caminetti v. *United States*, 242 U.S. 470, 485.
United States v. *Shreveport Grain & Elevator Co.*, 287 U.S. 77.
Bengzon v. *Secretary of Justice*, 299 U.S. 410.

The contention that the statute should be read so as to exclude from its application taxing officials of various States finds no support in the language employed in the

enactment and does not warrant engrafting upon the statute an exception which is not included therein.

South Carolina v. *United States*, 199 U.S. 437.
Ohio v. *Helvering*, 292 U.S. 360.
United States v. *California*, 297 U.S. 175, 185.

A steamboat company carrying from one foreign port to another a passenger who escaped at an American port of call, claimed that it had not violated section 10A of the Immigration Act of February 5, 1917, 8 U.S.C. §146, as it had no intention of permitting the passenger to land at the American port. "To say that the passenger had not been brought to the United States unless the intent was to leave him here, is not to construe the statute but to add an additional and qualifying term to its provisions. This we are not at liberty to do under the guise of construction, because, where the words are plain there is no room for construction." *Osaka Shoshen Kaisha Line* v. *United States*, 300 U.S. 98, 101.

The instant case comes within the phraseology of this remedial statute, which should receive a broad construction and afford adequate protection to estates from multiple taxation and at the same time furnish a method by which the conflicting claims of the States may be expeditiously and finally adjudicated.

It was said of this same act, before its present amendment: "The statute is remedial and to be liberally construed. It is broad enough to cover any adverse claims

against the proceeds of the policies, no matter on what grounds urged," which, while contained in the opinion of the District Court, was held to be an adequate answer to the contention that the act should have a strict interpretation. *Sanders* v. *Armour Fertilizer Works*, 292 U.S. 190, 199.

A decision by a tribunal in a proceeding in which the estate and the tax officials of each State claim to be entitled to such a tax upon the question of domicile would effectually determine which of a number of States would have the exclusive right to lay and collect such a tax. The scramble of different States to collect a large death tax from the estate of one who has had residences located in such State should halt. The practice tends to destroy good relations between the States, to shake public confidence in our judicial system, and to permit the confiscation of property of an estate under the guise of law. The successive collections by different States is plainly contrary to the due process clause of the Fourteenth Amendment to the Constitution of the United States.

The defendant Long submitted to the jurisdiction of the District Court, the same as the Connecticut officials voluntarily submitted to proceedings in the State courts of New York. In *Matter of Trowbridge*, 266 N.Y. 283. He raised no jurisdictional question, in an effort to secure an expeditious trial and decision as to whether Hunt was domiciled in Massachusetts or California, and for the fur-

ther reason that he recognized the inherent injustice that threatened the executor. The attitude of this defendant was referred to by Morton, J., in his dissenting opinion in these words: "One of the claimants, Mr. Long, Tax Commissioner of Massachusetts, regards the considerations just mentioned as so weighty that he makes no objection on jurisdictional grounds and approves the practice of submitting such cases of disputed domicile to the impartial determination of the federal courts." *Riley* v. *Worcester County Trust Co.*, 89 Fed. (2d) 59, 69.

We submit that the statute is broad enough to give the District Court jurisdiction; that there is urgent necessity in the interests of public justice in order that such controversies should be quickly and finally settled in a single tribunal and for the protection of the property of decedents against claims the satisfaction of which is contrary to the constitutional guaranty.

IV. The Interpleader Act is Not Violative of the Eleventh Amendment to the Constitution.

The appellees' main objection is that the defendants were before the District Court as agents and representatives of two States, which it is claimed were the real parties in interest, and that, consequently, the Eleventh Amendment inhibited the court from taking jurisdiction. That contention was overruled by the District Court, but was sustained by a majority opinion in the Circuit Court of Appeals for the First Circuit.

The rights of the State against being impleaded in a Federal court by a private citizen rise no higher than the right of the citizen to be free from having his property taken from him without due process of law. Both the Eleventh and Fourteenth Amendments to the Constitution of the United States are parts of a single instrument and are of equal validity. *Prout* v. *Starr*, 188 U.S. 537.

The protection accorded a citizen against the confiscation of his property under the guise of a tax law is superior to the attempt of the State to sequester the property by the enactment of an unconstitutional statute or by the enforcement of such a statute by its officials; otherwise the Constitution of the United States would cease to be the supreme law of the land. *Poindexter* v. *Greenhow*, 114 U.S. 270, 292.

It is well-established law that the Federal court has jurisdiction to enjoin the action of State officials who are attempting to enforce an unconstitutional statute to the detriment of the rights secured by the Constitution of the United States. Such suits are not against the States.

Osborn v. *United States Bank*, 9 Wheat. 738.
Board of Liquidation v. *McComb*, 92 U.S. 531.
Poindexter v. *Greenhow*, 114 U.S. 270, 292.
Pennoyer v. *McConnaughy*, 140 U.S. 1, 10.
Stanley v. *Schwalby*, 147 U.S. 508, 518.
In re Tyler, 149 U.S. 164.

Scott v. *Donald*, 165 U.S. 107.

Tindal v. *Wesley*, 167 U.S. 204.

Smyth v. *Ames*, 169 U.S. 466.

Prout v. *Starr*, 188 U.S. 537.

Ex parte Young, 209 U.S. 123, 160.

Western Un. Tel. Co. v. *Andrews*, 216 U.S. 165, 166.

Herndon v. *Chi., Rock Island & Pac. Ry.*, 218 U.S. 135, 155.

Hopkins v. *Clemson College*, 221 U.S. 636, 642, 643.

Philadelphia Co. v. *Stimson*, 223 U.S. 605, 621.

Home Tel. & Tel. Co. v. *Los Angeles*, 227 U.S. 278, 287, 288.

Truax v. *Raich*, 239 U.S. 33, 37.

Ex parte State of New York, 256 U.S. 490, 500.

Terrace v. *Thompson*, 263 U.S. 197, 214.

Fidelity & Deposit Co. v. *Tafoya*, 270 U.S. 426.

Old Colony Trust Co. v. *Seattle*, 271 U.S. 426.

Iowa-Des Moines National Bank v. *Bennett*, 284 U.S. 239, 241.

Sterling v. *Constantin*, 287 U.S. 378, 393.

"And it is no objection to the remedy in such cases, that the statute whose application in the particular case is

sought to be restrained is not void on its face, but is complained of only because its operation in the particular instance works a violation of a constitutional right; for the cases are numerous, where the tax laws of a State, which in their general and proper application are perfectly valid, have been held to become void in particular cases, either as unconstitutional regulations of commerce, or as violations of contracts prohibited by the Constitution, or because in some other way they operate to deprive the party complaining of a right secured to him by the Constitution of the United States.' *Poindexter* v. *Greenhow,* 114 U.S. 270, 295.

"A suit against state officers to enjoin them from enforcing a tax alleged to be in violation of the Constitution of the United States is not a suit against a State within the prohibition of the Eleventh Amendment." *Gunter* v. *Atlantic Coast Line,* 200 U.S. 273, 283.

The theory established by those cases, however, is not limited to instances where the State officials are acting under unconstitutional statutes, but also applies where they are acting in an unlawful manner under a valid enactment.

"Neither will the constitutionality of the statute, if that be conceded, avail to oust the Federal court of jurisdiction. A valid law may be wrongfully administered by officers of the State, and so as to make such administration an illegal burden and exaction upon the individual. A tax law, as it leaves the legislative hands, may not be obnoxious to any

challenge, and yet the officers charged with the administration of that valid tax law may so act under it in the matter of assessment or collection as to work an illegal trespass upon the property rights of the individual. They may go beyond the powers thereby conferred, and when they do so the fact that they are assuming to act under a valid law will not oust the courts of jurisdiction to restrain their excessive and illegal acts." *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U.S. 362, 390, 391.

"Although the law itself may be valid and provide for a proper valuation, yet if, through mistake on the part of the State, through its board of equalization and while acting as a *quasi*-judicial body, the board erred in the method to be pursued in relation to the corporations now before us, the mistake is one which may be corrected in equity." *Raymond* v. *Chicago Union Traction Co.*, 207 U.S. 20, 38.

"The principle is not confined to the maintenance of suits for restraining the enforcement of statutes which as enacted by the state legislature are in themselves unconstitutional." *Greene* v. *Louisville & Interurban R.R. Co.*, 244 U.S. 499, 507.

The principle settled in *Ex parte Young*, 209 U.S. 123, to the effect that a suit to restrain state officials from enforcing an unconstitutional state statute in violation of the plaintiff's rights and to his irreparable damage is not a suit against the State, applies also when the statute itself is constitutional but the attempted administration of it is not.

Greene v. *Louisville & Interurban R.R. Co.*, 244 U.S. 499, 506.

"We have to consider only the legal effect under the federal law of this wrongful administration of the state law. There is no challenge of the validity of any state statute." *Iowa-Des Moines National Bank* v. *Bennett*, 284 U.S. 239, 241.

"An officer transcending the limits of his authority under a constitutional statute may inflict similar injuries on property or individuals as though he were proceeding under an unconstitutional statute, and in either event, equity may intervene to restrain unfounded prosecutions." *Philadelphia Co.* v. *Stimson*, 223 U.S. 605.

The bill in the present case does not allege that the taxing statutes of either Massachusetts or California are unconstitutional. The officials of each of these States charged with the assessment and collection of inheritance taxes are, according to the bill, about to assess and collect from the estate two separate taxes on the same intangible personal property, and upon the same identical transfer from the dead to the living, in accordance with their inconsistent claims that the decedent at his death was domiciled in their own particular State and not in the other State. The claim, therefore, is that the taxing statutes of one of these States will necessarily be unconstitutionally applied to the damage of the executor.

In a majority of the cases where an injunction was issued against State officials, the basis for the proceedings

was that their conduct was in violation of the Fourteenth Amendment, and that such action on the part of these individuals brought the case within the sweep of this Amendment. *Iowa-Des Moines National Bank* v. *Bennett*, 284 U.S. 239, 245.

The defendant Controller is charged with the enforcement of the inheritance tax law of California and the defendant Tax Commissioner is imposed with a similar obligation in respect to such tax statutes of Massachusetts. *Fitts* v. *McGhee*, 172 U.S. 516, is, therefore, inapplicable for the reasons stated in *Ex parte Young*, 209 U.S. 123, 156, 157. Even if these respondents purported to be acting as agents of the State, their agency would not prevent the Federal courts from restraining their illegal action even though the principal could not be impleaded in those courts. *Osborn* v. *United States Bank*, 9 Wheat. 738. A State cannot grant immunity to a tax official to violate the Federal Constitution and permit him, under color of office, to collect a tax, inherently invalid, and turn it over to the State Treasury. In attempting to assess and collect such a tax, the official is acting clearly in excess of his powers, even though he claims to be acting for and in behalf of the State. *Old Colony Trust Co.* v. *Seattle*, 271 U.S. 426. A State suffers no legal damage because its tax collector is restrained from collecting a tax which the Constitution forbids. The State which is found not to be the domiciliary State has lost nothing in the eyes of the law by being deprived of collecting an inheritance tax upon the

intangibles. The State determined not to be the domiciliary State has sustained no loss.

It is true that the States have not as yet received inheritance taxes from the executor. If they had, then perhaps the executor would be in a situation where it would be without any remedy. If the States retained the taxes, they could hardly be said to disavow the action of their officials. That would be action by the States clearly within the prohibition of the Fourteenth Amendment to the Constitution of the United States. That was the situation disclosed in *Iowa-Des Moines Nat. Bank* v. *Bennett,* 284 U.S. 239. But a citizen may resist the payment of a tax which, in accordance with the constitutional guaranty, ought not to be exacted from him. His right to resist is superior to the demand for payment. Yet his property in each State is subject to a lien for the discharge of which he is required to satisfy the tax, and even then to incur penalties and forfeitures. Relief can hardly be expected from each of the taxing States. The power of the State is back of each collector and his action in attempting to collect the tax comes within the Fourteenth Amendment. "It provides, therefore, for a case where one who is in possession of state power uses that power to the doing of the wrongs which the Amendment forbids even although the consummation of the wrong may not be within the powers possessed if the commission of the wrong itself is rendered possible or is efficiently aided by the state authority lodged in the wrongdoer. That is to say, the theory of the Amend-

ment is that where an officer or other representative of a State in the exercise of the authority with which he is clothed misuses the power possessed to do a wrong forbidden by the Amendment, inquiry concerning whether the State has authorized the wrong is irrelevant and the Federal judicial power is competent to afford redress for the wrong by dealing with the officer and the result of his exertion of power." *Home Tel. & Tel. Co.* v. *Los Angeles,* 227 U.S. 278, 287. *Iowa-Des Moines Nat. Bank* v. *Bennett,* 284 U.S. 239, 246.

V. The Appellant may Invoke the Interpleader Act.

The appellees contend that the executor, a Massachusetts fiduciary, does not comply with the provisions of the Interpleader Act, because it has not any money or property in its possession to which both claimants are contending to be entitled, because they say their claim is against the California fiduciary, which is not a party to the bill. The latter has in its possession the property located in California, but the physical locus of the intangibles is immaterial. We are here concerned with an excise and not a property tax. The tax situs of the intangibles is determined by the principle of *mobilia sequuntur personam. Baldwin* v. *Missouri,* 281 U.S. 586. *Beidler* v. *So. Carolina Tax Commission,* 282 U.S. 1. It is true that there is no privity between the Massachusetts executor and the California administrator with the will annexed. *Brown*

v. *Fletcher's Estate,* 210 U.S. 82. *Ingersoll* v. *Coram,* 211 U.S. 335. But the death impost in each State is not an estate tax, but is a succession tax. *Leach* v. *Nichols,* 285 U.S. 165. California Inheritance Tax, §9, Appendix, pp. 49-50. While payment in the first instance is made by the personal representative, the ultimate burden is sustained by the same beneficiaries, the devisees and legatees. It is probably a matter of indifference to them whether the tax on intangibles is paid to the Massachusetts or to the California authorities, provided they are chargeable with but one tax. The executor represents the same identical beneficiaries as the administrator with the will annexed, and a payment of either will eventually be borne by them, and they being the real parties in interest, a judgment in either Massachusetts or California in which they were represented by the executor or administrator with the will annexed would be binding on them. *Chicago, R.I. & P. Ry.* v. *Schendel,* 270 U.S. 611, 622.

Although it has not yet been decided that one State can bring an action in a sister State to recover taxes, yet it seems that such a result would only be a short and logical step from the principle that, if the claim for taxes had been reduced to a judgment, a suit on that judgment could be maintained in another State. *Milwaukee County* v. *M. E. White Co.,* 296 U.S. 268.

In the next place, Massachusetts has a reciprocal probate statute which forbids a settlement of estates of persons dying in another State until inheritance taxes due in

the State of the death have been paid. Acts of 1933, c. 319. California has a similar statute; see §6½ (Appendix, pp. 48-49). In any event, it is clear that under the California statute (see Appendix, pp. 44-67) the State places the obligation to pay the tax upon the executor and imposes a lien upon all property until the tax is paid, yet the appellees claim that the executor is under no obligation to pay the tax. It is clear, however, that until the tax is paid the property in California, at least, is held as security for its payment, and probably might be sold in satisfaction of the tax. In order to obtain the assets of the estate it will be necessary for its personal representative to free them from the tax lien, and this can only be done by a satisfaction of the tax. If the executor wishes to prohibit a sale of the estate assets, it is, therefore, under compulsion to pay, and the only choice it has is to pay in order to secure the property that belongs to it for the purpose of distribution to those entitled thereto.

VI. A Single District Judge had Jurisdiction.

The appellees now contend that a single District Court judge was not empowered to hear the case. Their motion to dismiss attacked the entire bill as one over which the District Court had jurisdiction. The specific objection that it was a case to be heard by three judges was never raised and was inconsistent with the claim made in the District Court that that tribunal had no jurisdiction and not

that it had jurisdiction if the hearing was before three judges. The point now raised is not open on this record. *Grosjean* v. *American Press Co.*, 297 U.S. 233, 241, 242. If they had claimed that the case ought to have been heard by three judges, they should have so requested, and, upon refusal of the judge to call in two other judges, the appropriate remedy was a petition for mandamus, and not an appeal. *Ex parte Metropolitan Water Co.*, 220 U.S. 539.

Judicial Code, §266, 28 U.S.C. §380, provides that "No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application."

The petitioner did not allege that the taxing statutes of either Massachusetts or California were unconstitutional. The validity of each taxing system was assumed, but the contention is that the tax statute of one of these States is threatened to be wrongfully applied. The constitutionality of the State statutes not being involved, the case at bar does not come within the sweep of section 266. *Ex parte Buder,* 271 U.S. 461. *Gully* v. *Interstate Nat. Gas Co.,* 292 U.S. 16.

The bill does not set forth any order or decree which the taxing officials of either State have made, but simply complains that both propose to enforce their taxing statutes. The executor complains of wrongful conduct which is imminent and not the promulgation of any assessment or levy. Under such circumstances, section 266 has no application. *Ex parte Williams,* 277 U.S. 267. *Ex parte Hobbs,* 280 U.S. 168.

Moreover, the act expressly provides that the court is empowered to issue process and an injunction. There is no mention of any requirement of a three-judge court. It eliminates any possible doubt that both sections 265 and 266 of the Judicial Code did not apply. It was expressly enacted: "(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States Court . . ."

Conclusion.

This defendant submits that the States are unable to settle between themselves conflicting claims of domicile; that duplicate taxation of estates upon the basis of dual domicile is unjust; that the solution of a problem which is becoming more acute and wide-spread lies in a Federal court which, having jurisdiction of the parties and the subject-matter, will be enabled in this class of cases to determine the locus of a debated domicile. The Interpleader Act is capable of furnishing relief. It does not impair the rights of the States conferred by the Eleventh Amendment, and it does protect private property by enforcing the Fourteenth Amendment.

We submit that the action of the District Court in issuing an injunction was correct and the majority opinion of the Circuit Court of Appeals remanding the case to the District Court, with directions to dismiss it for want of jurisdiction, was erroneous and should be revised.

HENRY F. LONG,
Commissioner of Corporations and Taxation
of the Commonwealth of Massachusetts,
By Paul A. Dever,
Attorney General,
James J. Ronan,
Assistant Attorney General.

APPENDIX.

INTERPLEADER ACT.

[PUBLIC—NO. 422—74TH CONGRESS.] [S. 1277.]

AN ACT To amend section 24 of the Judicial Code by conferring on district courts additional jurisdiction of bills of interpleader, and of bills in the nature of interpleader.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 24 of the Judicial Code, as amended, is amended by inserting at the end thereof the following:

"(26) Original jurisdiction of bills of interpleader, and of bills in the nature of interpleader.—Twenty-sixth.—(a) Of suits in equity begun by bills of interpleader or **bills in the nature of bills of interpleader** duly verified, filed by **any person, firm, corporation, association, or society** having in his or its custody or possession money or property of the value of $500 or more, or having issued a **note,** bond, certificate, policy of insurance, **or other instrument** of the value or amount of $500 or more, or providing for the delivery or payment **or the loan** of money or property of such amount or value, or **being under any obligation written or unwritten to the amount of $500 or more,** if—

"(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such

money or property, **or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligations;** and

"(ii) The complainant (a) has deposited such money or property or has paid the amount **of or the loan or other value of such instrument or the amount due under such obligation** into the registry of the court, there to abide the judgment of the court; **or (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.**

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

"(b) **Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.**

"(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any

State court or **in any United States court** on account of such money or property or on such **instrument or obligation** until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

"(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same.

"(e) **In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section 274b of the Judicial Code (U.S.C., title 28, sec. 398), any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of this subsection or any other provision of the Judicial Code and the rules of court made pursuant thereto. The defendant may join as parties to such equi-**

table defense any claimant or claimants who are not already parties to such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 274b of the Judicial Code."

SEC. 2. The Act entitled "An Act authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader," approved May 8, 1926 (U. S. C., Supp. III, title 28, sec. 41 (26)), is hereby repealed. Said repeal shall not affect any act done or any right; accruing or accrued in any suit or proceeding had or commenced under said Act hereby repealed, prior to the passage of this Act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said Act had not been repealed hereby.

Approved, January 20, 1936.

Massachusetts Statutes.

General Laws (Ter. Ed.) c. 65, sec. 1.

All property within the jurisdiction of the commonwealth, corporeal or incorporeal, and any interest therein, belonging to inhabitants of the commonwealth, and all real estate or any interest therein and all tangible personal property within the commonwealth belonging to persons who are not inhabitants of the commonwealth except such an interest in such real estate as is represented by a mortgage or by a transferable certificate of participation or share of an association, partnership or trust, which shall pass by will, or by laws regulating intestate succession, or by deed, grant or gift, except in cases of a bona fide purchase for full consideration in money or money's worth, made in contemplation of the death of the grantor or donor or made or intended to take effect in possession or enjoyment after his death, and any beneficial interest therein which shall arise or accrue by survivorship in any form of joint ownership in which the decedent joint owner contributed during his life any part of the property held in such joint ownership or of the purchase price thereof, to any person, absolutely or in trust, except to or for the use of charitable, educational or religious societies or institutions, the property of which is by the laws of the commonwealth exempt from taxation, or for or upon trust for any charitable purposes to be carried out within

the commonwealth, or to or for the use of the commonwealth or any town therein for public purposes, shall be subject to a tax at the percentage rates fixed by the following table:

Relationship of Beneficiary to Deceased.	Rate Per Centum of Tax on Value of Property or Interest.							
	On Value not over $10,000.	On Excess above $10,000, not over $25,000.	On Excess above $25,000, not over $50,000.	On Excess above $50,000, not over $250,000.	On Excess above $250,000, not over $500,000.	On Excess above $500,000 not over $750,000.	On Excess above $750,000, not over $1,000,000.	On Excess above $1,000,000.
Class A.								
Husband, wife, father, mother; child, adopted child, adoptive parent, grandchild, ...	1%	1%	2%	4%	5%	6%	7%	8%
Class B.								
Lineal ancestor, except father or mother; lineal descendant, except child or grandchild; lineal descendant of adopted child; lineal ancestor of adoptive parent; wife or widow of a son; husband of a daughter, ...	1%	2%	4%	5%	6%	7%	8%	9%
Class C.								
Brother, sister, half brother, half sister, nephew, niece, step-child or step-parent, ...	3%	5%	7%	8%	9%	10%	11%	12%
Class D.								
All others, ...	5%	6%	7%	8%	9%	10%	11%	12%

Provided, however, that no property or interest therein, which shall pass or accrue to or for the use of a person in Class A, except a grandchild of the deceased, unless its value exceeds ten thousand dollars, and no other property or interest therein, unless its value exceeds one thousand dollars, shall be subject to the tax imposed by this chapter, and no tax shall be exacted upon any property or interest so passing or accruing which shall reduce the value of such property or interest below said amounts.

All property and interests therein which shall pass from a decedent to the same beneficiary by any one or more of the methods hereinbefore specified and all beneficial interests which shall accrue in the manner hereinbefore provided to such beneficiary on account of the death of such decedent shall be united and treated as a single interest for the purpose of determining the tax hereunder.

GENERAL LAWS (TER. ED.) c. 65, SEC. 6.

Administrators, executors and trustees, grantees or donees under conveyances or gifts made during the life of the grantor or donor, persons to whom beneficial interests shall accrue by survivorship and beneficiaries receiving additional property as provided in section twenty-seven, shall be liable for the taxes imposed by this chapter, with interest, until the same have been paid.

CALIFORNIA POLITICAL CODE, 1931.

POLITICAL CODE PROVISIONS.

INHERITANCE TAX OFFICE TO BE MAINTAINED BY CONTROLLER.

§ 445. The controller shall maintain under his authority and direction a department, to be known as the inheritance tax department, which is hereby established, for the purpose of supervising and assisting in the administration of the inheritance or transfer tax laws of this state.

Said department shall gather, record, compile, publish and distribute such information and data as the controller may direct relative to the inheritance or transfer tax laws of this or other states or relative to the administration, enforcement or evasion of such laws. Said department shall cooperate with, advise and assist inheritance tax appraisers, county treasurers, district attorneys and other officers and persons in the administration and enforcement of the inheritance or transfer tax laws of this state, and shall prepare, publish and distribute such blank forms for use of inheritance tax appraisers or other use as the controller may direct.

In connection with said inheritance tax department, the controller may appoint, in addition to other employees provided for by statute, an inheritance tax attorney, whose office shall be in the city of Sacramento, five assistant inheritance tax attorneys, two of whom shall have their offices in the city of Los Angeles, two of whom shall have their offices in the city and county of San Francisco, and one of whom shall have his office in the city of Sacramento. Said attorneys shall be civil executive officers and shall be admitted and licensed to practice before the supreme court of this state. The inheritance tax attorney shall, under the authority and direction of the controller, have general supervision of said department. He shall have particular charge of the legal work connected with said department and shall perform such other duties as the controller may direct.

Said assistant inheritance tax attorneys shall perform such legal and other services relative to the administration and enforcement of said inheritance or transfer tax laws in the respective counties in which their offices may be situated or in any neighboring county, as the controller may direct.

The salary of said inheritance tax attorney shall be four thousand two hundred dollars per annum. The salary of one assistant inheritance tax attorney whose office shall be in the city of Los Angeles shall be four thousand two hundred dollars per annum. The salary of the second assistant inheritance tax attorney whose office shall be in the city of Los Angeles shall be three thousand dollars per annum. The salary of one assistant inheritance tax attorney whose office shall be in the city and county of San Francisco shall be four thousand two hundred dollars per annum. The salary of the second assistant inheritance tax attorney, whose office shall be in the city and county of San Francisco shall be three thousand dollars per annum. The salary of said assistant inheritance tax attorney whose office shall be in the city of Sacramento shall be three thousand dollars per annum. The salaries of said inheritance tax attorney and of said assistant inheritance tax attorneys shall be paid at the same times and in the same manner as the salaries of other state officers.

Said attorneys shall also receive their necessary traveling and incidental expenses. Said expenses and any other and

further and additional expenses for attorneys, clerks, experts, agencies or persons or for any other purpose which said controller may find necessary or proper in the conduct of said inheritance tax department shall be paid out of such moneys as may be appropriated from time to time to the controller for use of said inheritance tax department.

California Inheritance Tax Act.

Acts of 1921 as amended in 1923, 1925, 1927 and 1929.

Section 1. (1) This act shall be known as the "inheritance tax act."

(2) The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state or subject to the jurisdiction thereof; *provided,* that for the purpose of this act upon the death of the husband one-half of the community property is taxable under the provisions of this act; *provided, further,* that when the husband by testamentary disposition of the community property forces the surviving wife to elect whether to take under his will or by operation of law, the one-half or less of the community property, which the wife takes under the said will in lieu of the one-half belonging to her under the provisions of section

one thousand four hundred one of the Civil Code, shall not be taxable under the provisions of this act; the provisions of this proviso shall also extend to those estates now in probate and in which the orders fixing tax have not become final judgments as provided by this act; *provided, further,* the one-half of the community property which belongs to the surviving spouse, under the provisions of section one thousand four hundred one of the Civil Code, and, in the case of the death of the wife, the community interest which goes to her husband under the provisions of section one thousand four hundred two of the Civil Code in the absence of her testamentary disposition thereof to another or others, shall not be deemed to pass to such surviving spouse as heir, but shall for the purpose of this act, be deemed to go, pass or be transferred for a valuable consideration, and the said one-half of the community property and the interest last mentioned going as aforesaid to the surviving husband shall not be subject to the provisions of this act; *provided, further,* that for the purposes of this act, personal property wherever situated, heretofore or hereafter acquired while domiciled elsewhere, which would not have been the separate property of either husband or wife if acquired while domiciled in this state shall be deemed to be community property; *provided, further,* that in case of a transfer of the community property from one spouse to the other within the meaning of subdivision three (3) or five (5) of section two of this act, one-half of the

community property so transferred shall not be subject to the provisions of this act; *and provided, further,* that the presumption that property acquired by either husband or wife after marriage is community property, shall not obtain for the purpose of this act as against any claim by the state for the tax hereby imposed; but the burden of proving such property to be community property shall rest upon the person claiming the same to be community property.

(3) The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described.

(4) The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor.

(5) The words "county treasurer" and "inheritance tax appraiser," as used in this act, shall be taken to mean the treasurer or the inheritance tax appraiser of the county of the superior court having jurisdiction as provided in section fifteen of this act.

[(6) Refers to the effective date.]

SEC. 2. TAX ON TRANSFERS. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income

therefrom in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, to be paid to the treasurer of the proper county, as hereinafter directed, for the use of the state, said taxes to be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions hereinafter granted, in the following cases:

(1) RESIDENT DECEDENTS. When the transfer is by will or by the intestate or homestead laws of this state, from any person dying seized or possessed of the property while a resident of the state, or by any order of court setting apart property and/or making and granting extra or family allowances pursuant to article one, chapter five, title eleven, part three of the Code of Civil Procedure.

(2) NONRESIDENT DECEDENTS. When the transfer is by will or intestate laws of property within this state and the decedent was a nonresident of the state at the time of his death, or by any order of court setting apart property and/or making and granting extra or family allowances pursuant to article one, chapter five, title eleven, part three of the Code of Civil Procedure.

[The remaining subdivisions, dealing with transfers in contemplation of death, joint accounts, etc., are not material.]

SEC. 3. Such taxes shall be and remain a lien upon the property passed or transferred until paid; *provided, however,* that where property is sold under and in accordance

with the provisions of chapter seven, title eleven, part three of the Code of Civil Procedure the lien herein provided for shall be released from the property so sold and shall attach to the proceeds of such sale, and the person to whom the property passes or is transferred, except as herein in this section provided, and all administrators, executors and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The provisions of the Code of Civil Procedure relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty prescribed by this act, and this section shall be construed as having been in effect as of date of the original enactment of the inheritance tax law; *provided,* that unless sued for within five years after they are due and legally demandable, such taxes, or any taxes accruing under any act herein repealed, shall cease to be a lien as against any bona fide purchaser of said property; *and provided,* that no such lien shall cease within two years from the date of the passage of this act.

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SEC. 6½. The tax imposed by this act in respect of intangible personal property shall not be payable if the decedent is a resident of a state or territory of the United States or a foreign state or country which at the time of his death imposed a legacy, succession or death tax in re-

spect of intangible personal property within said state or territory or foreign state or country of residents of said state or territory or foreign state or country, but did not impose a legacy or succession tax or a death tax of any character in respect of intangible personal property within said state or territory or foreign state or country of residents of this state, or if the laws of the state or territory or foreign state or country of residence of the decedent at the time of his death contained a reciprocal provision under which nonresidents were exempted from legacy or succession taxes or death taxes of every character in respect of intangible personal property providing the state or territory or foreign state or country of residence of such nonresidents allowed a similar exemption to residents of the state or territory or foreign state or country of residence of such decedent. For the purposes of this act the District of Columbia shall be considered a territory of the United States.

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SEC. 9. (1) Any administrator, executor, or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until

he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator, or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator, or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the superior court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

(2) All executors, administrators, and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed.

(3) Every sum of money retained by an executor, administrator, or trustee, or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the treasurer of the county in which the probate proceedings are pending.

SEC. 10. Upon the payment to any county treasurer of any tax due under this act, such treasurer shall issue a receipt therefor, in triplicate, one copy of which he shall deliver to the person paying said tax, and the original and one copy thereof he shall immediately send to the controller

of state, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and said controller shall retain one of said receipts and the other he shall countersign and seal with the seal of his office, and immediately transmit to the clerk of the court fixing such tax. And an executor, administrator, or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed, unless a receipt so sealed and countersigned by the controller, or a copy thereof, certified by him, shall have been filed with the court. Any person shall, upon payment to the county treasurer of the sum of fifty cents, be entitled to a duplicate, or copy, of any receipt that may have been given by said treasurer for the payment of any tax under this act.

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SEC. 12. (1) POWER OF INSPECTION. Whenever the state controller shall have reasonable cause to believe that a tax is due under the provisions of this act, upon any transfer of any property, and that any person, firm, institution, company, association or corporation has possession, custody or control of any books, accounts, papers or documents relating to or evidencing such transfer, the state controller or inheritance tax attorney, or any assistant inheritance tax attorney of the inheritance tax department, is hereby authorized and empowered to inspect the books, records, accounts, papers and documents of any such per-

son, firm, institution, company, association or corporation, including the stock transfer book of any corporation, and to administer oaths to and examine any such person or any officer or agent of such firm, institution, company, association or corporation, for the purpose of acquiring any information deemed necessary or desirable by said state controller or such inheritance tax attorney or assistant inheritance tax attorneys, for the proper enforcement of this act, and for the collection of the full amount of tax which may be due the state hereunder.

[The rest of the section forbids tax officials to divulge information and provides penalties for refusal to show books and papers to tax officials.]

SEC. 13. (1). CORPORATE STOCK. No corporation organized or existing under the laws of this state, shall transfer on its books or issue a new certificate for any share or shares of its capital stock belonging to or standing in the name of a decedent or in trust for a decedent or belonging to or standing in the joint names of a decedent and one or more persons, without the written consent of the state controller or person by him in writing authorized to issue such consent.

(2) SAFE DEPOSIT BOXES. No safe deposit company, trust company, corporation, bank, or other institution, person or persons engaged in the business of renting safe deposit boxes or other receptacles of similar character shall rent any such box or receptacle without first requiring all

persons given access thereto to agree in writing to notify such safe depositary, bailee, or lessor, from whom such box or receptacle is rented of the death of any person having the right of access thereto, before seeking access to such box or receptacle after the death of such person; and all persons having the right of access to any such safe deposit box or receptacle upon the death of any other person having access thereto, before seeking access to such box or receptacle must notify such safe depositary, bailee, or lessor, from whom such box or receptacle is rented of the death of such person; and it shall be unlawful for any safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or under control, custody or partial custody any safe deposit box or similar receptacle, to permit access thereto by any one after the death of any person who at the time of his death had the right or privilege of access thereto either as principal, deputy, agent, or cotenant without the consent of the state controller or such person by him in writing authorized to issue such consent.

(3) BANK DEPOSITS, ETC. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control or custody or under partial control or partial custody securities, deposits, assets or property belonging to or standing in the name of a decedent who was a resident or nonresident, or belonging to, or standing in the joint names of

such a decedent and one or more persons, including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives, agents, deputies, attorneys, trustees, legatees, heirs, successors in interest of said decedent or to any other person or persons, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed thereon under this act and unless notice of the time and place of such delivery or transfer be served upon the state controller and county treasurer at least ten days prior to said delivery or transfer; *provided,* that the state controller, or person by him in writing authorized so to do, may consent in writing to said delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation hereunder to give such notice or to retain any portion of said securities, deposits or other assets in their possession or control. And it shall be lawful for the state controller or county treasurer, personally or by representatives, to examine said securities, deposits or assets at the time of said delivery or otherwise.

[The rest of the section refers to penalties.]

SEC. 14. The state controller shall appoint, and may at his pleasure remove, one or more persons in each county of the state to act as inheritance tax appraisers therein. Every such inheritance tax appraiser (in addition to any fees paid him as appraiser under section one thousand four hundred forty-four of the Code of Civil Procedure) shall be paid for his services out of any inheritance tax moneys in the hands of the treasurer of the county in which he may be acting, a reasonable compensation, to be fixed by the superior court of said county, or a judge thereof, and, together with said compensation, said appraiser shall be allowed his actual and necessary traveling and other incidental expenses, and the fees paid such witnesses as he shall subpoena before him, said expenses and fees to be allowed by said superior court or a judge thereof; *provided,* that any claim for any such services or expenditure, must before payment, first receive the approval of the state controller; *and provided, further,* that in any probate proceeding in which the executor or administrator shall have failed to have had the inheritance tax appraiser act as one of the appraisers under section one thousand four hundred forty-four of the Code of Civil Procedure and to have paid him his fees therefor, the expense of making the inheritance tax appraisement in this act provided for shall be paid out of said estate, and the executor or administrator thereof shall be liable for said fee. Any such appraiser who shall take any fee or reward, other than such as may be

allowed him by law, from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail ninety days or both, and in addition thereto the court shall dismiss him from such service.

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SEC. 16. (1) APPOINTMENT AND REPORT OF INHERITANCE TAX APPRAISERS. When any superior court, having jurisdiction in probate of the estate of any decedent, or a judge of such court, shall, in accordance with section 1444 of the Code of Civil Procedure, appoint the appraiser or appraisers in said section provided for, said superior court or judge thereof shall also at the same time designate and appoint an inheritance tax appraiser (unless such designation and appointment be previously made) to ascertain and report to said superior court the amount of inheritance tax due upon any property passing in said probate proceeding, or a lien thereon, or upon any other property transferred within the meaning of subdivision (3) of section 2 of this act, or under any other provision of this act, to any person, institution or corporation taking property under and by virtue of said probate proceedings, together with such other or additional information as shall assist

said court in the determination of said tax. Thereupon said inheritance tax appraiser shall have all the powers of a referee of said superior court, and shall have jurisdiction to require the attendance before him of the executor or administrator of said estate, or any person interested therein, or any other person whom he may have reason to believe possesses knowledge of the estate of said decedent, or knowledge of any property, transferred by said decedent within the meaning of this act, or knowledge of any facts that will aid said appraiser or the court in the determination of said tax. For the purpose of compelling the attendance of such person or persons before him, and for the purpose of appraising any property or interest subject to, or liable for any inheritance tax hereunder, and for the purpose of determining the amount of tax due thereon, the said inheritance tax appraiser is hereby authorized to issue subpoenas compelling the attendance of witnesses before him. Any person or persons who shall be served with a subpoena, issued by said inheritance tax appraiser, to appear and testify or to produce books and papers, and who shall refuse and neglect to appear and testify or to produce books and papers relevant to such appraisement, as commanded in such subpoena, shall be guilty of a contempt of court. And he may examine and take the evidence of such witnesses or of such executor or administrator, or other person under oath concerning such property and the value thereof, and concerning the property or the estate

of such decedent subject to probate, and concerning any transfer made by such decedent within the meaning of this act. Upon the completion of his inheritance tax appraisement in any probate proceeding, the inheritance tax appraiser shall make a report in writing to the superior court of the clear market value of the several interests in the estate of the decedent, and shall report the amount of inheritance, or transfer tax chargeable against, or a lien upon such interests, acquired by virtue of said probate proceedings or by any transfer within the meaning of this act, to any person, institution or corporation acquiring any property by virtue of said probate proceedings together with such other facts as may advise the court in regard thereto, or which the court may require, and may return to said superior court such depositions as he may have had reduced to writing, exhibits, or other testimony or information taken before him, or submitted to him.

(2) NOTICE OF FILING REPORT. ORDER CONFIRMING REPORT AND FIXING TAX. Upon the filing of said report said appraiser shall mail a copy thereof to the state controller and the clerk of said superior court shall on said day or the next succeeding judicial day give notice of such filing to all persons interested in such proceedings by causing notice to be posted at the court house in the county where the court is held, and in addition thereto shall mail to the state controller and to all persons chargeable with any tax in said report who have appeared in such proceeding, a

copy of said notice. At any time after the expiration of ten days thereafter, if no objection to said report be filed, the said superior court or a judge thereof, may, without further notice, give and make its order confirming said report and fixing the tax in accordance therewith. At any time prior to the making of said order, any person interested in said proceeding (including the state controller) may file objections in writing to said report. Thereupon the clerk of the said superior court shall fix a time, not less than ten days thereafter, for the hearing thereof, and shall give notice of the said hearing by posting a notice thereof at the court house in the county where the court is held and by forthwith mailing a copy of such objection and of such notice to the state controller, county treasurer and inheritance tax appraiser. Upon the hearing of said objections, said court, may make such order as to it may seem meet and proper in the premises; *provided,* that for the purpose of said hearing the report of the inheritance tax appraiser shall be presumed to be correct and it shall be the duty of objector or objectors to proceed in support of said objection or objections.

(3) ORDER THAT NO INHERITANCE TAX DUE. If, upon examination of the executor or administrator of said estate or other persons familiar with the affairs of such decedent, or from other information before him, it shall appear to the inheritance tax appraiser that there is no inheritance tax due out of said estate or a lien upon any property or inter-

est therein, said appraiser may so certify to the superior court, and at any time thereafter, if no objection to said certificate shall have been filed, said superior court or a judge thereof may, without further notice, make an order or decree that there are no inheritance taxes due out of said estate or upon any interest therein or may make such different order as may to it seem meet in the premises. Such order shall be conclusive only as to such property as may have been returned in the inventory or inventory and appraisement in said probate proceedings.

SEC. 17. (1) DETERMINING TAXABILITY OF TRANSFER. If it shall appear to the superior court upon petition of the state controller that any transfer has been made within the meaning of this act, and the taxability thereof, and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor, and the amount thereof may be determined, said court shall issue a citation ordering and directing the persons who may appear liable therefor or known to own any interest in or part of the property transferred, to appear before said court or before an inheritance tax appraiser to be designated by said order at a time and place in said order named, not less than ten days nor more than one year from the date of such order, to be examined, under oath by said court or by said appraiser as the case may be, concerning said transfer and all facts connected

therewith, and concerning the property transferred and the character and value thereof.

EXAMINATION BY APPRAISER. If said person or persons shall be directed to appear before said appraiser said appraiser shall, at the time and place in said order named, or at such time and place to which said appraiser may adjourn said hearing, proceed to examine said person or persons and such witnesses as said appraiser may subpoena before him, and for the purpose of said hearing, and for the purpose of ascertaining any facts concerning the taxability of said transfer or any taxes due on account of such transfer, said appraiser shall have the powers of a referee of said court, and is hereby authorized to issue subpoenas compelling the attendance of witnesses before him, and to administer oath, and to take the evidence of such witnesses under oath concerning such property and the value thereof and concerning such transfer. Said appraiser shall report to said court his findings and conclusions in relation to said transfer and said tax, and may return to said court, any depositions, exhibits or other testimony or information taken before him or exhibited to him. The procedure subsequent to the filing of said report shall conform to subdivision (2) of section sixteen of this act.

PROCEEDINGS. Except as herein otherwise provided, the service of such citation and the time, manner and proof thereof, and the hearing and determination thereon, and the hearing and determination upon the facts returned in

such report, and the enforcement of the determination or decree, shall conform to the provisions of chapter twelve, title eleven, part three of the Code of Civil Procedure, and the clerk of the court shall, upon the request of the state controller, furnish, without fee, one or more transcripts of such decree, and the same shall be docketed and filed by the county clerk of any county in the state, without fee, in the same manner and with the same effect as provided by section six hundred seventy-four of said Code of Civil Procedure for filing a transcript of an original docket.

HEARING BY COURT. The superior court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases.

(2) PETITION TO DETERMINE TAXABILITY. Verified petitions may be filed by any interested party with the superior court, alleging and admitting that a transfer within the meaning of this act has been made and the taxability thereof and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor and the amount thereof, may be determined, and that the petitioner de-

sires such determination and desires to pay said tax, if any be due. Upon the filing of such petition the superior court or a judge thereof shall by order designate and appoint an inheritance tax appraiser to ascertain and report to said court the amount of the inheritance tax, if any, due by said petitioner on account of such transfer, and shall fix a time and place, not less than ten days thereafter, for the hearing of said matter before said inheritance tax appraiser, a copy of which petition and order shall be forthwith mailed to the state controller, and shall refer said petition and said matter to said inheritance tax appraiser who shall have all of the powers of a referee of said court, including the powers prescribed in subdivision (1) of section sixteen of this act. The procedure subsequent to said reference to said appraiser shall conform to the provisions of subdivisions (1) and (2) of section sixteen of this act.

In the event that final judgment is rendered in said proceeding, ascertaining and determining that no inheritance tax is due on account of said transfer or that the amount of the tax to which said transfer is liable, is less than twenty dollars the court shall, in addition to the amount of the tax, if any, include in such judgment and assess against the petitioner reasonable compensation for said inheritance tax appraiser, not exceeding the sum of ten dollars, and the necessary traveling and incidental expenses of said appraiser.

(3) ACTION TO QUIET TITLE. Actions may be brought against the state by any interested person for the purpose of quieting the title to any property against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes nor chargeable with any tax under this act. No such action shall be maintained where any proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor and the amount thereof may be determined. All parties interested in said transfer and in the taxability thereof shall be made parties thereto and any interested person who refuses to join as plaintiff therein may be made a defendant. Summons for the state in said action shall be served upon the state controller.

At any time after issue is joined in such action the court, on its own motion, or upon the motion of any interested party, may by order appoint and designate an inheritance tax appraiser to hear said matter and report to the court thereon and shall in such order fix a time and place for the hearing of said matter before said inheritance tax appraiser, and direct notice of such time and place to be given in such manner as the court shall deem proper, and shall refer said matter to said inheritance tax appraiser who shall have all of the powers of a referee of said court, including the powers prescribed in subdivision (1) of section sixteen of this act. The procedure subsequent to said

reference to said appraiser shall conform to the provisions of subdivision (1) and (2) of section sixteen of this act.

Should the court determine that the property described in the complaint is subject to the lien of said tax and that said property has been transferred within the meaning of this act, the court shall award affirmative relief to the state in said action, and judgment shall be rendered therein in favor of the state, ascertaining and determining the amount of said tax, and the person or persons liable therefor, and the property chargeable therewith or subject to lien therefor, and shall assess against such person or persons reasonable compensation for said inheritance tax appraiser and his necessary traveling and incidental expenses.

(4) VENUE. Actions under this section shall be commenced in the superior court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of lien; but if in said action no lien against real property is sought to be enforced, the action shall be brought in the superior court of the county which has or which had jurisdiction of the administration of the estate of the decedent mentioned herein.

(5) NO FEES TO BE CHARGED CONTROLLER. No fee shall be charged said state controller by any public officer in this state for the filing or recording of any petition, lis pendens, decree or order, or for the taking of oaths or acknowledgments in any proceeding taken under this act; nor shall

any undertaking be required from or costs charged against the state controller or the State of California in any such proceeding.

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SEC. 19. The treasurer of each county shall collect all taxes and moneys that may be due and payable under this act and pay the same to the state treasurer (excepting such moneys as he may pay out from time to time pursuant to the provisions of this act) and the state treasurer shall give him a receipt therefor; of which collection and payment he shall make a report, under oath, to the controller, between the first and fifteenth days of May and December of each year, stating for what estate paid, and in such form and containing such particulars as the controller may prescribe; and for all such taxes collected by him and not paid to the state treasurer by the first day of June and January of each year he shall pay interest at the rate of ten per centum per annum.

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SEC. 21. The state controller, whenever he shall be cited as a party in any proceeding or action to determine any tax under this act provided, or whenever he shall deem it necessary for the better enforcement of this act to make any special employment to secure evidence of evasion of said tax, or to commence or appear in any proceeding or action to determine any tax hereunder, may, by and with the consent and approval of the attorney general, make

such special employment or designate and employ counsel or attorney in or out of this state to represent him on behalf of the state, and, by and with such consent of the attorney general, he is hereby authorized to incur the necessary expense for such employment and any reasonable and necessary expense incident thereto. And the county treasurer is hereby authorized and directed to pay out of any funds which may be in his hands on account of this tax, on presentation of a sworn itemized account and on certificate of the state controller and attorney general, all expenses incurred as in this section above provided, but no expense for such special employment or legal services, up to and including the entry of the order of the court fixing the tax and the same becoming final, shall exceed ten per centum of the tax and penalties collected; *provided,* that all reasonable and necessary expenses incurred, in any legal action or proceeding in any court of this state or on any appeal therefrom, other than attorney's fees, including expense of serving processes and printing and preparing of necessary legal papers, may be allowed and paid in the manner above provided, even though no tax be recovered in such action or proceeding, and the limitations herein made shall not apply thereto.

§ 1024. Before any decree of distribution is made, all inheritance taxes due from the distributee and all personal property taxes due and payable by the estate must be paid.

§ 1202. At any time after the issuance of letters testamentary or of administration, any person interested in the estate, whether as heir, devisee, legatee, creditor, beneficiary under a trust, or as otherwise interested, or the state controller, may, in person or by attorney, serve upon the executor or administrator or trustee, or upon the latter's attorney, and file with the clerk of the court where the proceedings are pending, with a written admission or proof of such service, a written request, stating that he desires special notice of the filing of any or all of the petitions, accounts or reports mentioned in section 1200 of this code, and giving the post-office address of the person making the same, or his attorney. Thereafter such person shall be entitled to notice as provided in said section 1200.